

Real Estate Tip of the Week: Can you forfeit a licence?

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Forfeiture is always spoken about in reference to the termination of leases.

But the Supreme Court case of *The Manchester Ship Canal Company Ltd (“MSCC”) v Vauxhall Motors Ltd (Formerly General Motors UK Ltd) (“Vauxhall”)* [2019] UKSC 46 demonstrates that equitable relief from forfeiture can be granted in respect of a licence, here on condition of the payment of the arrears and certain other costs.

MSCC argued that, in relation to land, the courts can only relieve parties from the forfeiture of proprietary rights, which would exclude Vauxhall’s contractual rights under the licence. Vauxhall argued that the doctrine is broad enough to protect any right to use land and the Court agreed.

So the right of relief from forfeiture may apply (depending on the circumstances) whenever a landlord terminates an on-going licence to occupy due to a breach of its terms.

As with forfeiture of a lease, there will be some formalities which a landowner should consider when thinking about terminating a licence or some other possessory right over land. In a lease context these can include:

- In order to forfeit a lease for non-payment of rent, the landlord must have previously served a formal demand on the tenant for the outstanding rent (unless there is an express provision in the lease for rent to be paid, whether the rent is formally demanded or not).
- In cases where the tenant is in a formal insolvency process, leave of the court may be required before a landlord can seek to forfeit the lease.
- A landlord should be careful in the case of accepting rent or fees after a breach has occurred as this may be deemed to be an implied waiver of the right to forfeit.
- If a landlord waives their right to forfeit (either expressly or impliedly) then a landlord cannot forfeit the lease at a later date based on the same breach, unless it is a so-called continuing breach, such as the ongoing breach of a repair covenant.

In all cases professional advice should be sought prior to seeking forfeiture of a lease or a licence.

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